

AN Ordinance by Councilmember Clairmuller
A^SSUBSTITUTE ORDINANCE BY
FINANCE/EXECUTIVE COMMITTEE

02-O-0083

**AN ORDINANCE AMENDING SECTION 2-1292 OF
THE CITY'S CODE OF ORDINANCES TO
CLARIFY PROCEDURES FOR AUTHORIZING
THE CITY'S PURCHASING AGENT'S EXECUTION
OF CONTRACT MODIFICATIONS AND CHANGE
ORDERS TO CITY CONTRACTS; TO CLARIFY
CERTAIN ERRORS AND INCONSISTENCIES IN
THE CODE SECTION; AND FOR OTHER
PURPOSES.**

WHEREAS, Section 2-1292 of the City's Code of Ordinances allows the City's Purchasing Agent, in one emergency circumstance only, to execute contract modifications and change orders without formal City Council authorization when:

1. The Purchasing Agent, the Chief Financial Officer and Using Agency determine in writing that the total cumulative cost of all contract modifications or change orders does not exceed ten percent of the total "not to exceed" cost originally authorized for the contract; **and**
2. The Purchasing Agent, the Chief Financial Officer and Using Agency determine in writing that the contract modification or change order cannot be delayed pending approval of the Mayor and City Council without substantial delay and cost to the City; **and**
3. The Chief Financial Officer verifies the availability of funds for the contract modification or change order; **and**
4. Where the contractor's ability to meet the terms and conditions of the contract are materially affected by:
 - a. Differing conditions; or
 - b. Estimating errors unapparent to the City or contractor at the time of entering into the contract; or
 - c. Design errors; or
 - d. Other miscellaneous unapparent errors.

WHEREAS, in all other instances, City Council and Mayoral approval are required before a contract modification or change order may be executed by the Purchasing Agent; **and**

WHEREAS, it is believed that certain errors and inconsistencies currently exist in City Code Section 2-1292 which need to be corrected; **and**

WHEREAS, it is also desirable and in the best interests of the City to impose additional conditions on the emergency execution of contract modifications or change orders in order to ensure the City's actions are fiscally responsible and justified by the existing circumstances;

NOW THEREFORE, BE HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That Section 2-1292(a)(1) is amended as follows:

1. Current Subsection 2-1292(a)(1)b is deleted in its entirety and replaced with the following:

- b. The Chief Financial Officer verifies in writing the availability of funds therefore;

2. current Subsection 2-1292(a)(1)c is renumbered to 2-1292(a)(1)d; and

3. the following is added before the newly numbered Subsection 2-1292(a)(1)d:

- c. Proposed contract modifications or change orders exceeding \$500,000, notwithstanding that this amount may be less than the ten percent (10%) total cumulative cost of all contract modifications or change orders for the year in question and as specified in Subsection 2-1292(a)(1) of this Ordinance, must be approved by the mayor and city council. To determine the authority of the Purchasing Agent to execute a contract modification or change order pursuant to this Ordinance for a contract with a term in excess of 1 year, the total of the monetary amounts payable under the contract for the multi-year term must be prorated equally for each year of the term of the contract. The annual prorated amount will serve as the benchmark for calculating the 10% ceiling set forth in this Ordinance for the applicable year in which the contract modification or change order is to be effected, as specified in Subsection 2-1292(a)(1), subject to the \$500,000 limitation. For instance, the 10% ceiling for

a contract modification or change order involving a 10 year, \$10 million contract with an annual payment due of \$1 million each year, will be calculated to be \$100,000.

Section 2: That Subsection 2-1292(b)(2) is deleted in its entirety and replaced with the following:

(2) Conditions that were unknown to both parties at the time of entering into the original contract;

Section 3: Except as amended by this Ordinance, the remainder of Section 2-1292 remains in full force and effect.

Section 4: That all ordinances and parts of ordinances in conflict with this Ordinance are repealed.

RCS# 4224
11/18/02
2:58 PM

Atlanta City Council

Regular Session

02-O-0083

Amending Purchasing Procedures

REFER

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

NV Smith	Y Archibong	Y Moore	NV Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	NV Woolard

02-O-0083

RCS# 4223
11/18/02
2:57 PM

Atlanta City Council

Regular Session

02-O-0083

Remove from the Table; Amending
Purchasing Procedures
PROCEDURE

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

NV Smith	Y Archibong	Y Moore	NV Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	NV Woolard

02-O-0083

RCS# 3708
5/06/02
2:44 PM

Atlanta City Council

Regular Session

02-O-0083

Clarify procedures for execution of
contract modifications & change orders
TABLE

YEAS: 9
NAYS: 5
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

Y Smith	Y Archibong	N Moore	Y Mitchell
Y Starnes	Y Fauver	N Martin	Y Norwood
N Young	Y Shook	N Maddox	Y Willis
B Winslow	Y Muller	N Boazman	NV Woolard

02-O-0083

RCS# 3707
5/06/02
2:43 PM

Atlanta City Council

Regular Session

02-O-0083

Clarify procedures for execution of
contract modifications & change orders
RECONSIDER

YEAS: 10
NAYS: 4
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

Y Smith	Y Archibong	N Moore	Y Mitchell
Y Starnes	Y Fauver	N Martin	Y Norwood
Y Young	Y Shook	N Maddox	Y Willis
B Winslow	Y Muller	N Boazman	NV Woolard

02-O-0083

RCS# 3706
5/06/02
2:42 PM

Atlanta City Council

Regular Session

02-O-0083

Clarify procedures for execution of
contract modifications & change orders
REFER FIN/EXEC

YEAS: 14
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
B Winslow	Y Muller	Y Boazman	NV Woolard

02-O-0083

#1/

**AN ORDINANCE BY COUNCILMEMBER CLAIR MULLER
AS SUBSTITUTE BY FINANCE/EXECUTIVE COMMITTEE**

02-O-0083

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WHEREAS, Section 2-1292 of the City's Code of Ordinances allows the City's Purchasing Agent, in one emergency circumstance only, to execute contract modifications and change orders without formal City Council authorization when:

1. The Purchasing Agent, the Chief Financial Officer and Using Agency determine in writing that the total cumulative cost of all contract modifications or change orders does not exceed ten percent of the total "not to exceed" cost originally authorized for the contract; **and**
2. The Purchasing Agent, the Chief Financial Officer and Using Agency determine in writing that the contract modification or change order cannot be delayed pending approval of the Mayor and City Council without substantial delay and cost to the City; **and**
3. The Chief Financial Officer verifies the availability of funds for the contract modification or change order; **and**
4. Where the contractor's ability to meet the terms and conditions of the contract are materially affected by:
 - a. Differing conditions; or
 - b. Estimating errors unapparent to the City or contractor at the time of entering into the contract; or
 - c. Design errors; or
 - d. Other miscellaneous unapparent errors.

WHEREAS, in all other instances, City Council and Mayoral approval are required before a contract modification or change order may be executed by the Purchasing Agent; **and**

WHEREAS, it is believed that certain errors and inconsistencies currently exist in City Code Section 2-1292 which need to be corrected; **and**

WHEREAS, it is also desirable and in the best interests of the City to impose additional conditions on the emergency execution of contract modifications or change orders in order to ensure the City's actions are fiscally responsible and justified by the existing circumstances;

NOW THEREFORE, BE HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That Section 2-1292(a)(1) is amended as follows:

1. Current Subsection 2-1292(a)(1)b is deleted in its entirety and replaced with the following:
 - b. The Chief Financial Officer verifies in writing the availability of funds therefore;
2. current Subsection 2-1292(a)(1)c is renumbered to 2-1292(a)(1)d; and
3. the following is added before the newly numbered Subsection 2-1292(a)(1)d:
 - c. any contract approval for a duration of more than 1 year shall be prorated equally for each year of the life of the contract. The annual prorated amount shall serve as a benchmark for change order requirements as specified in Subsection 2-1292(a)(1) of the City Code of Ordinances. Contract modifications or change orders in the amount of \$500,000 or more, notwithstanding that this amount may be less than the ten percent (10%) of the total cumulative cost of all contract modifications or change orders specified in Subsection 2-1292(a)(1), shall require approval of the Committee of Purview during an emergency Committee meeting or the next regularly scheduled meeting for the Committee; provided, however, that if such approval is granted, subsequent formal City Council and Mayoral approval will not be required. Prior to convening the meeting

of the Committee of Purview, the Purchasing Agent must provide to the members of the Committee the written determinations required by Subsections 2-1292(a)(1) and 2-1292(a)(1) a and b of this Ordinance.

Section 2: That Subsection 2-1292(b)(2) is deleted in its entirety and replaced with the following:

(2) Conditions that were unknown to both parties at the time of entering into the original contract;

Section 3: Except as amended by this Ordinance, the remainder of Section 2-1292 remains in full force and effect.

Section 4: That all ordinances and parts of ordinances in conflict with this Ordinance are repealed.

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 - a. Differing conditions; or
 - b. Estimating errors unapparent to the City or contractor at the time of entering into the contract; or
 - c. Design errors; or
 - d. Other miscellaneous unapparent errors.

WHEREAS, in all other instances, City Council and Mayoral approval are required before a contract modification or change order may be executed by the Purchasing Agent; and

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3. the following is added before the newly numbered Subsection 2-1292(a)(1)d:

c. any contract approval for a duration of more than 1 year shall be prorated equally for each year of the life of the contract. The annual prorated amount shall serve as a benchmark for change order requirements as specified in Subsection 2-1292(a)(1) of the City Code of Ordinances. Contract modifications or change orders in the amount of \$500,000 or more, notwithstanding that this amount may be less than the ten percent (10%) of the total cumulative cost of all contract modifications or change orders specified in Subsection 2-1292(a)(1), shall require approval of the Committee of Purview during an emergency Committee meeting or the next regularly scheduled meeting for the Committee; provided, however, that if such approval is granted, subsequent formal City Council and Mayoral approval will not be required. Prior to convening the meeting

of the Committee of Purview, the Purchasing Agent must provide to the members of the Committee the written determinations required by Subsections 2-1292(a)(1) and 2-1292(a)(1) a and b of this Ordinance.

Section 2: That Subsection 2-1292(b)(2) is deleted in its entirety and replaced with the following:

(2) Conditions that were unknown to both parties at the time of entering into the original contract;

Section 3: Except as amended by this Ordinance, the remainder of Section 2-1292 remains in full force and effect.

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2. current Subsection 2-1292(a)(1)c is renumbered to 2-1292(a)(1)d; and
3. the following is added before the newly numbered Subsection 2-1292(a)(1)d:
 - c. the Committee of purview for the contract to which a contract modification or change order is proposed approves of the contract modification during an emergency Committee meeting or the next regularly scheduled meeting for that Committee; provided, however, that if such approval is granted, subsequent formal City Council and Mayoral approval will not be required. Prior to convening the meeting of the Committee of purview, the Purchasing Agent must provide to the members of the Committee the written determinations required by Subsections 2-1292(a)(1) and 2-1292(a)(1)a and b of this Ordinance; and

Section 2: That Subsection 2-1292(b)(2) is deleted in its entirety and replaced with the following:

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